EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

CHARLES SEWARD, Individually, and on Behalf of All Others Similarly Situated,	)))
	) **Case No. 08 CIV 3976**
Plaintiff,	)
	) **ECF CASE**
v.	)
	) **DECLARATION OF GARY**
INTERNATIONAL BUSINESS MACHINES D/B/A IBM CORP.	) **SALLES**
	)
Defendant.	)

I, GARY SALLES, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based upon my own personal knowledge and, if called to testify, would state:

EMPLOYMENT BACKGROUND

1.   I worked as an hourly call center employee for IBM in its Atlanta, Georgia offices from February, 1999 to October, 2007. From February, 1999 until April, 2001 I was a salaried employee working as New Business Coordinator, responsible for determining head-count based on anticipated call volumes of new accounts. I was trained on IBM's phone switch software and had access to the telephone call records for the call center. In May, 2001, I was "rebanded" to a Band 4 which was a non-exempt position paid at an hourly rate for all time reported. From 1999 until October 2007, I worked in IBM Global Technical Services Division, at Global Services Smart Center (GSSC)..

2.   I have specific information about the terms and conditions of employment for IBM call center employees; training of IBM call center employees; the work and duties of call center employees; IBM's time keeping system; IBM production matrices; and, IBM compensation and directives from IBM to control overtime hours.

3.   While employed by IBM, I worked under the following managers: Denise Hines Anderson; Edwin Lewis; Ronald Moore; and Eugene Schvartsman.

4.   While employed by IBM, I worked under the following 2nd line managers: Randy Wampler; Eugene Schvartsman; Roy Ovesen; and Steve Byndloss.

5.   While working at IBM, I sat on the diversity counsel. We dealt with a variety of issues including workplace discrimination. We were specifically directed not to address time keeping or overtime issues.

IBM'S INACCURATE TIME KEEPING

6.   IBM uses a timekeeping system known as "TOTALS." "TOTALS" is a mainframe time keeping system that is also accessible via IBM's website.

7.   Typically, TOTALS defaults to reflect the "scheduled" time as the time actually worked unless an exception is entered. I had access to enter an exception on the TOTALS time keeping system, as did other employees in my department, but many other call center employees in other departments did not have this access. For example, call center employees in the customer services division could not enter any exceptions directly into the TOTALS time keeping system. Hours worked and exceptions could only be entered into the TOTALS system by managers or their delegated team leaders. There is no way an employee in those departments could verify that the hours they worked were reported into TOTALS until paychecks were received.

8.   I was dissuaded by management from entering "exceptions" showing overtime hours worked on the TOTALS system. TOTALS did not accurately capture all the actual time I or other call center employees worked each week.

9.   IBM requires its employees to log on to their telephone system at their scheduled start time by punching in their employee code. IBM directed us to be ready to start taking phone calls precisely at the time our scheduled shift started. To do so, I and other call center employees routinely arrived at our desks to work approximately 15 minutes before our scheduled start times. This pre-shift work was not recorded by IBM. IBM also requires its employees to log off their telephone system at the end of their scheduled shift. IBM produces a report each day of telephone log on and off times. Departments using these phone logs do not accurately report hours worked by employees while they are not available for a telephone call.. Performance measurements are based on time "available" to take calls, or time actually on a call, not the actual time worked by employees while off the phone. This measurement discrepancy is the source of much frustration amongst IBM call center employees.

10.   IBM required its call center employees to swipe a key card when they entered their work floor of the call center. These entries were known as badge swipe times and were reflected on an IBM report. IBM did not require its employees to swipe out when they left their floor at the end of their work time.

IBM "EXCEPTION" PAY

11.   I was paid approximately $ 20.00 per hour as a call center employee in the Remote Technical Support group.

12.   IBM pays its call center employees regular pay on a bi-monthly basis. These payments are based on an employee's scheduled time and do not accurately reflect actual time worked. For example, if an employee is scheduled to work 40 hours but actually works 42 hours, that employee is only paid for 40 hours worked on his bi-monthly paycheck.

13.   If an employee works additional time, including overtime, and that time is recorded on an exception report by management, IBM pays this additional compensation on a weekly basis because it is an "exception" to regular pay. If an employee works less time than scheduled and it is recorded on an exception report, IBM would deduct that time missed from the employee's next paycheck.

14.   IBM creates an exception report reflecting time and compensation that are exceptions to the rule which is scheduled time.

UNPAID TIME WORKED OFF THE CLOCK

15.   As a call center employee, I was typically scheduled to work 40 hours per week. My regular hours were from 10:00 am to 7:00 pm with a one hour unpaid lunch.

16.   On average I worked approximately 8.25 to 9 hours per day and a total of approximately 42.5 to 45 hours per week. I was typically only paid for 8 hours per day and 40 hours per week. I worked unpaid time off the clock an average of 30 minutes to 1 hour per day and 2.5 to 5 hours per week.

17.   I and other call center employees routinely arrived at our desks to work approximately 15 minutes before our scheduled start times so that we could boot up our computers and start any computer applications that we would need for the job. This pre-shift work was not recorded by IBM and I was not paid for this work.

18.   I and other call center employees are required to stay available to handle calls until the end of our scheduled shift. IBM directed us to finish a call even if it continued past our scheduled shift or make sure the call was transferred to another call center employee. Often times I worked past my scheduled shift completing these calls. I was not always paid for the time I worked past my scheduled shift.

19.   IBM caused me and other call center employees to work "off the clock", which no doubt resulted in a savings in labor costs and payroll for the company.

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20. IBM required me and other call center employees to work "off the clock," on average, approximately 2.5 to 5 hours per week.

COMPLAINTS ABOUT TIMKEEPING AND OVERTIME

21. I complained to several of my various first and second line managers that IBM was not properly recording all time worked, including overtime.

22. As a matter of regular practice and in response to my complaints, I was told that overtime was not permitted. Moreover, if you completed an exception report, you were likely to be reprimanded by your team leader as well as your first line manager.

IBM's PRODUCTION MATRIX

23. IBM call centers utilize a production matrix to maximize phone call efficiency. IBM tracks number of calls and length of each call to run its matrix calculations.

24. IBM prepares statistical phone reports which provide averages on length of calls and amount of calls. This report deals with call patterns.

25. To further increase efficiency, IBM even pre-determines when its call center employees are permitted bathroom breaks.

26. IBM bases its matrices on an eight hour shift. IBM does not take preparation time or post shift time into account when preparing its matrices.

27. Most IBM contracts are paid on a per call basis. Therefore, if IBM is able to shorten its calls, each call center employee can handle more calls during an eight hour shift and IBM will generate more revenue.

28. IBM provides incentives in the form of gift certificates and accolades to call center employees with high production (i.e. the most phone calls per shift). Although IBM has a written policy which specifically forbids "comp time" many first line and second line managers routinely use this method to reduce overtime charges to their department. IBM generates reports which rank call center employees based on their production rate. This report is called an Employee Performance Report and ranks call center employees on calls taken on a daily, weekly, monthly and yearly basis.

OTHER

29. IBM call center employees at band level 5 and below were paid an hourly rate. Employees rated at band level 6 or higher are paid a salary.

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30. IBM provides its call center managers with a budget of allocated hours from which overtime is deducted. Managers are rated on payroll and overtime is part of their performance. For example, if you reduced OT by 10% it would be acknowledged on the manager's personal business commitment "PBC" report as a positive achievement.

31. Some departments in IBM prohibit its call center employees from using personal cell phones on the call center floors.

32. I am aware of other IBM call centers that are similar to the Atlanta, Georgia call center. Specifically, there is another large call center located in Dallas, Texas.

33. All of the other call center employees were subject to the same policies described above and were therefore required to work off-the-clock. I know this because: 1) I personally observed them working before clocking-in in the morning and after clocking-out in the evening; 2) IBM informed me and the other call center employees, both verbally at meetings and via mass emails directed to all call center employees nationwide, that we were required to work "off the clock" without overtime compensation as described above; and, 3) I talked to other call center employees who informed me that they also were performing off-the-clock work both before and after their shifts and did not receive overtime compensation for these hours consistent with IBM's policies as described above.

Dated: July 31, 2008   _Gary Salles_ _____Sign Name

                                        _____Print Name
                                        GARY SALLES

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